

Litigation

June 2010

California

In Defense of Animals v. Salazar, (Case 2:10-at-00993) (E.D. Calif) (Filed 7/15/10)

Plaintiff, In Defense of Animals (IDA) et al., brought suit seeking to enjoin BLM's gather of excess wild horses from the Twin Peaks HMA in Northeastern California and challenging the legality of placing wild horses in long-term holding. The District Court denied the request for injunction. Plaintiffs appealed this denial to the Ninth Circuit, however the Ninth Circuit denied plaintiffs' request for an emergency injunction. The wild horse gather operations began on Wednesday, August 11, 2010 and ended on September 23, 2010. Plaintiffs did not withdraw their appeal from the denial of the injunction and on January 11, 2011, the Ninth Circuit held oral argument on that appeal. The parties are waiting for a ruling by the Ninth Circuit. Meanwhile, the United States has filed a motion to dismiss this litigation as moot in the district court and that motion is also pending.

Colorado

Colorado Wild Horse and Burro Coalition, Inc., et al. v. Salazar, 10 CV 1645 (D.D.C.) (proposed gather for West Douglas Herd Area). Plaintiffs filed a Complaint and a motion for preliminary injunction (PI) and temporary restraining order (TRO) alleging the proposed gather of wild horses to reach an AML of 0 in the West Douglas Herd Area would violate the Wild Free-Roaming Horses and Burros Act, NEPA, FLPMA and the Information Quality Act (IQA). The motion for PI/TRO was denied due to BLM's postponement of the gather. BLM's answer, administrative record, and motion to dismiss the IQA claim were filed November 9, 2010. On November 10, 2010, White River Conservation District, Douglas Creek Conservation District, Colorado Association of Conservation Districts, Colorado Cattleman's Association, Colorado Farm Bureau Federation, Public Lands Council, and four individuals moved to intervene in the case as defendant-interveners aligned with BLM. A ruling on the motion to intervene is pending as a dispute over supplementation of the administrative record. BLM notified the Court on its decision to withdraw the 2010 Gather Plan on February 21, 2011. The parties are to confer and report to the Court by March 9, 2011 on how the case will proceed.

Habitat for Horses, et al. v. Salazar, 10 CV 7684 (S.D.N.Y.) (N. Piceance Herd Area gather). On October 7, 2010, Plaintiffs filed a complaint in the U.S. District Court for the Southern District of New York that alleges BLM's proposed gather of excess wild horses within the North Piceance Herd Area (HA) violates the Wild Free-Roaming Horses and Burro Act, the National Environmental Policy Act, the Federal Land Policy Management Act, and the Information Quality Act. The claims are very similar to those made in *Colorado Wild Horse and Burro Coalition, Inc., et al. v. Salazar*, 10 CV 1645 (D.D.C.). On October 14, Plaintiffs filed a motion for preliminary injunction (PI) and temporary restraining order (TRO) with additional request that the gather in the HA be ceased immediately. After briefing and a hearing, the Court also denied Plaintiffs' motion for PI/TRO. The Court ruled that although they had established

irreparable harm, Plaintiffs had not demonstrated a likelihood of success on the merits. BLM's motion to dismiss for mootness and failure to state a claim was filed January 28, 2011. Plaintiff's response is due March 4, 2011. BLM's reply will be due March 14, 2011.

Habitat for Horses, et al. v. Salazar, 10-5104 (2nd Cir.) On December 15, 2010, Plaintiffs filed an appeal of district court's denial of preliminary injunction in Habitat for Horses, et al. v. Salazar, 10 CV 7684 (S.D.N.Y.). A case management conference was held February 9, 2011. Plaintiffs have indicated a willingness to withdraw their appeal. Negotiations on conditions for withdrawal are ongoing.

IBLA 2011-23. Appeal to IBLA of cancellation of Private Maintenance and Care Agreement for adopted wild horses. BLM served the decision and repossessed the horses on October 5, 2010.

Montana

Litigation to require the US Forest Service to expand the Pryor Mountain Herd Management Area (Territory) is pending mediation in the 9th Circuit.

September 2009, the U.S. District Court for the District of Columbia denied a Temporary Restraining Order (TRO) request to stop the Pryor gather. BLM proceeded with the gather and adopted or sold all of the excess wild horses that were gathered. The plaintiff filed an amended complaint concerning the gather and while a ruling was pending the case was re-assigned to a different judge located in Ohio although the case is still technically in the U.S. District Court for the District of Columbia.

The plaintiff who had previously appealed the Pryor Mountain Wild Horse Range Herd Management Area Plan (HMAP) that was affirmed in January 2010 by IBLA, subsequently filed a second amended complaint (SAC) to the U.S. District Court for the 2009 gather challenging the use of Categorical Exclusions (CX) for adoption events and the HMAP while also litigating the U.S. Forest Service to expand the Pryor Mountain Herd Management Area (Territory). The gather and first amended complaint were dismissed as moot but the SAC was allowed by the U.S. District Court and is currently being argued.

A decision for the use of fertility control was issued on January 11, 2011. The decision would treat 70-80% of the mares per year by age class over the next 5 years. A Petition for a Stay and Appeal to IBLA was received from one individual and is pending a ruling.

Nevada

Laura Leigh v. Salazar, Case No. 3:10-cv-00417-LRH-VPC (D. Nev.) (Filed 7-9-10)

Plaintiff, Laura Leigh filed a motion for a Temporary Restraining Order (TRO) and Preliminary Injunction, alleging a violation of her First Amendment rights on the basis that BLM would likely place unreasonable restrictions on her access the Silver King Herd Management area to observe wild horse gather operations. On September 27, 2010, the district court issued an Order denying Plaintiff's request for a TRO. Gather operations began at the Silver King HMA on September 26, 2010 and ended October 13, 2010. On November 16, 2010, the court held a hearing on Plaintiff's request for a reconsideration of the court's denial of a TRO. Following the hearing, the parties briefed the court on the proper scope of the case and whether the court should have allowed witness testimony during the November 2010 hearing. The parties are waiting on the court's ruling and for a litigation schedule.

Two appeals of the Antelope HMA Complex gather were filed with BLM. The appeals were forwarded to the Interior Board of Land Appeals. Decisions are pending.

Oregon

Plaintiffs have filed suit against the US Forest Service alleging failure to comply with the National Forest Management Act and Administrative Procedure Act by allowing excess horses to remain in the Murderers Creek Wild Horse Territory. The requested relief is a Court Order requiring management at the 100 head level identified in the Malheur National Forest Plan.

The plaintiffs filed an additional suit alleging BLM/USFS did not complete an Endangered Species Act (ESA) consultation on the 2007 gather plan. Legal counsel for both agencies have engaged in numerous conference calls with respective Districts involved and are exploring options for a settlement agreement.

In December 2010 the appellant withdrew their appeal. The Forest Service suit is ongoing.

Burns District received an Appeal of the Stinking Water Wild-horse gather on July 27, 2010 from Sheri Welsh. There was not petition for a stay and horses were gathered in mid-August. The Appeal and Administrative record were sent to IBLA on August 20, 2010. A motion to dismiss was sent on October 20, 2010. There has been no response from IBLA.

The main points of the appeal centered on population estimates, genetics, herd viability, fertility control, request for scientific analysis for range conditions, AMLs levels, and cost estimates for the stinking water gather.

Wyoming

BLM's decision to cancel an adopter's Private Maintenance and Care Agreement was appealed to the Interior Board of Land Appeals. Case is pending.